

Office Action Summary

Application No.

10/580,314

Applicant(s)

RIEDER ET AL.

Examiner

PUNAM PATEL

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14 and 17-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date: 20081124
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 20 contains minor informalities. Claim 20 recites the limitation of “said electrode”, “said first delimiting surface” and “said second delimiting surface”. The claim limitation lacks antecedent basis. It appears that Claim 20 should depend on Claim 19, wherein the limitation of electrodes has been recited. For the purposes of examination, Claim 20 will be read as depending on Claim 19. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 25 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

With respect to Claim 25, the disclosure fails to teach an embodiment of the invention wherein a plurality of roof elements are utilized at once. Applicant is reminded that an apparatus must be claimed as it exists at one point in time. The applicant appears to be claiming a product by process (wherein parts are interchanged); however the claim has not been written in such a manner. Furthermore no drawing has been provided of this embodiment, or of the roof elements of varying thicknesses.

With respect to Claim 26, the disclosure fails to teach an embodiment of the invention wherein media of different densities and a potting compound are used to fill the chamber above the roof element. **The specification teaches one or the other (Specification, pgs. 5 and 7).** In what manner would the two be combined together? Furthermore, is the media a solid, liquid, gas, or a combination thereof. No written description or drawing is provided of said media.

No prior art rejection is appropriate for Claims 25 and 26, due to the unclear nature of the claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 has been amended to include the limitations of Claim 16 (see Amendment dated 10/06/2008). The newly inserted claim language presents antecedent basis issues. Lines 13-14, recite "the node plane"; line 14 recites "a plane of symmetry"; line 17 recites "it has a node plane"; and line 21 recites "the node plane is a plane of symmetry." The following claim language (lines 13-21) is suggested to clarify the claimed subject matter:

--a ring-shaped membrane, or diaphragm, provided in the region of a **node plane** or a plane of symmetry of said oscillatable unit, via which membrane, or diaphragm, said oscillatable unit is connected with said housing, wherein:

said oscillatable unit is composed of a plurality of components and is so embodied that **the node plane** is arranged essentially perpendicularly to the radiating or receiving direction of the ultrasonic measuring signals;

at least a portion of an outer surface of said oscillatable unit is connected with said housing in the region of the node plane of said oscillatable unit; and

the node plane is **the plane of symmetry** of said oscillatable unit.—

Claims 17-26 depend on Claim 14 and therefore inherit the deficiency. Appropriate correction is required.

Allowable Subject Matter

Claims 14-24 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

Applicant's arguments filed 10/06/2008 have been fully considered but they are not persuasive.

Applicant has failed to address the 35 U.S.C., 112, first paragraph, rejection of Claim 25. The disclosure fails to teach the invention “wherein a plurality of roof elements are utilized at once.” (see rejection above). Rather the disclosure teaches that “[a]ccording to one alternative, the roof element 17 is exchangeable with roof elements 17 of different thicknesses and/or different densities being provided, which are exchangeable as a function of the particular medium 4 to be measured” (See Specification, pg. 7). As best understood, the statement is

teaching that the roof element 17 maybe exchanged with another roof element 17 of varying thickness and/or density. The disclosure teaches selecting **a single roof element** out of a plurality of roof elements depending on the particular medium 4 to be measured. Note that the drawings provided support this interpretation of the Specification. The applicant appears to be claiming a product by process (wherein parts are interchanged); however the claim has not been written in such a manner.

Applicant has failed to address the 35 U.S.C., 112, first paragraph, rejection of Claim 26. The disclosure fails to teach an embodiment of the invention wherein media of different densities **and** a potting compound are used to fill the chamber above the roof element (see rejection above). Applicant has failed to show where the Disclosure provides support for Claim 26.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PUNAM PATEL whose telephone number is (571)272-6794. The examiner can normally be reached on Monday to Friday 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harshad Patel/
Primary Examiner, Art Unit 2855

PP
12/30/2008